

Questions and Answers

About the Proposal to Permanently Extend an Amended Special Rule For the Preble's Meadow Jumping Mouse

Part I: General

What is a special rule?

The Endangered Species Act allows the Secretary of the Interior to issue rules that provide exceptions to the prohibition on take for threatened species. Under current regulations, a “special rule” can be tailored for a particular threatened species, so that take prohibitions would not apply. This special rule contains the prohibitions and exemptions necessary and appropriate to conserve the species.

What is the difference between “take” and “unintentional or incidental take” of a threatened species?

“Take” means to harass, harm, pursue, hunt, shoot, wound, trap, kill, or collect a listed species or attempt any of these actions.

“Unintentional or incidental take” is take that is incidental to, but not the purpose of, an otherwise legal activity.

When was the Preble's meadow jumping mouse listed as a threatened species?

The U. S. Fish and Wildlife Service listed the Preble's meadow jumping mouse as a threatened species in May 1998.

Why should we be concerned about the Preble's mouse?

The Endangered Species Act provides protection for all endangered and threatened species, regardless of their size, emotional appeal or popularity. Many scientists believe the Preble's is an “indicator” species whose dwindling population is a symptom of an unhealthy ecosystem. The apparent decline of the species may be an indication that stream-side vegetation has been severely affected by rapidly expanding development along the Front Range, which runs from Colorado Springs, Colorado to Cheyenne, Wyoming. This stream-side habitat supports many other species of wildlife including deer, songbirds, and native fishes.

What do Preble's mice look like?

The Preble's is 8 to 9 inches in length with a tail that accounts for 60 percent of its measurement. It has coarse fur with a dark back, paler sides tending toward yellowish brown and a white belly. Its hind feet are long and adapted for jumping small distances.

Where are Preble's mice found?

In portions of eastern Colorado and southeastern Wyoming. The range of the species corresponds largely to the rapidly developing Front Range Urban Corridor running from Colorado Springs, Colorado, to Cheyenne, Wyoming.

Why is the Preble's mouse in decline?

The decline of the species is indicative of the decline of riparian habitat throughout the Front Range.

What role did the results of recent genetic tests have on the proposal to permanently extend the amended special rule for the Prebles mouse?

None. Special rules are not listing rules. Rather, they provide further definition regarding the prohibitive actions that apply to the listed species. The Service will, however, be reviewing the results and considering them with regard to any petitions regarding the species.

Part II: Special Rule

Why was a special rule developed for the Preble's meadow jumping mouse?

There are many activities carried out by private entities or Federal, State, or local governments that occur in Preble's habitat and that could result in unintentional or incidental take of the mouse. Unless exempted from the take prohibitions of the Endangered Species Act, any person undertaking such activities may be required to obtain a special permit or an incidental take authorization, in accordance with the Endangered Species Act.

The U.S. Fish and Wildlife Service recognized that the needs of the community could and should be balanced with the long-term conservation goals for the mouse. Under Section 4(d) of the Endangered Species Act, the Service adopted a special rule in 2001 that defines the conditions under which unintentional take of the mouse would be exempted from Endangered Species Act prohibitions. This special rule was amended on Oct. 1, 2002 to include additional conditions.

What is exempted under this proposal to permanently extend the amended special rule?

This proposed extension exempts the following activities from the general take prohibitions of the Endangered Species Act, provided that they are conducted in accordance with the special rule.

1. Rodent control within 10 feet or inside any structure. Since the Preble's Meadow Jumping Mouse is not generally found in structures such as barns, houses, or other buildings, Preble's mortality associated with rodent control near these structures will be minimal.

2. Ongoing agricultural activities provided there is no increase of impacts or further

encroachment upon Preble's habitat. This exemption provides for the continuation of ongoing agricultural practices.

Situations where Preble's populations coexist with ongoing agriculture may provide valuable insight into habitat conditions and specific types of grazing and farming practices that are compatible with Preble's. This exemption may provide an incentive for agricultural interests to engage in voluntary conservation activities.

3. Maintenance, replacement and improvement of existing landscaping and related structures. Some landscaping activities, such as lawn mowing and gardening associated with residential or commercial development, golf courses, and parks may disrupt Preble's habitat in certain areas. However, because minimal take is associated with these activities, they are not expected to adversely affect Preble's conservation and recovery efforts.

4. Existing uses of water associated with the exercise of perfected water rights.

Augmentation plans, replacement plans, and exchanges of water that have been recognized by decree or certificate of appropriation would be considered exempt. Take associated with new water development would not be exempted.

Many existing water use activities appear to be compatible with maintaining populations of Preble's mice. In some places, the mice exist only due to human manipulation of water flows.

Except for the exemptions outlined in the special rule, any other take of Preble's without an appropriate permit or other authorization from the Service will be illegal.

5. Noxious Weed Control. The special rule includes a range-wide exemption for control of noxious weeds with appropriate limitations designed to prevent eradication of entire plant communities in the course of controlling weeds.

The U.S. Fish and Wildlife Service believes that control of noxious weeds as required by the States of Colorado and Wyoming can be beneficial to Preble's conservation and recovery because noxious weeds are displacing desirable natural vegetation upon which Preble's depends.

6. Ongoing Ditch Maintenance. The special rule provides a limited exemption for customary ditch maintenance activities that result only in temporary disturbance or very limited long-term disturbance of Preble's habitat. This exemption is intended to apply only to man-made ditches and is not intended to address alteration of habitat along naturally-occurring streams and watercourses.

This limited exemption is designed to provide relief to those who must maintain active ditches, and to assure that currently existing Preble's habitat along ditches remains functionally intact and viable.

What ditch maintenance activities would be exempted?

- Those that are normal and customary and that result in the annual loss of no more than

one-quarter mile of riparian shrub habitat per each linear mile of ditch within any calendar year. Examples of shrubs include, but are not limited to, willow, snowberry, wild plum, and alder.

- One exempted activity is ditch burning that takes place between November and April, which is the hibernation period for the Preble's Meadow Jumping Mouse.

Best Management Practices must be followed, including the following:

- **Impacts to shrubs:** Ditch maintenance activities shall avoid, to the maximum extent practicable, impacts to shrub vegetation. For example, if it is possible to access the ditch for maintenance or repair activities from an area containing no shrubs, adjacent shrub vegetation must be avoided.

Disposition of Debris: As much as possible, silt and debris and other materials removed during ditch cleaning, and vegetation or mulch from mowing or cutting shall not be placed or sidecast into shrub habitat. These materials should not disturb more than one-quarter mile of riparian shrub habitat per linear mile of ditch within any calendar year.

- **Out-of-Season:** As much as possible, all ditch maintenance activities will be carried out during the Preble's hibernation season, which runs from November through April.
- **Timing:** All maintenance activities carried out during the Preble's active season, May through October, will be conducted during daylight hours only.

Examples of ditch-maintenance activities that are exempt from the general take provisions of the Endangered Species Act:

Destruction from these activities must be limited to one-quarter mile of riparian shrub habitat per linear mile of ditch within any calendar year. Examples of these activities include:

- Clearing of trash, debris, vegetation, and silt by either physical, mechanical, chemical or burning procedures. Examples include mowing or cutting of grasses and weeds, removal of silt and debris from the ditch, and control of shrubs that could result in ditch leakage.
- Reconstruction, reinforcement, repair or replacement of existing infrastructure with components of substantially similar materials and design. Examples include replacement of a damaged headgate, grading or filling in locations susceptible to ditch failure, patchwork on a concrete ditch liner, or replacement of failed culvert with a new culvert.

Examples of ditch maintenance activities that are not exempt from the general take provisions of the Endangered Species Act:

- Replacement of existing infrastructure with components of substantially different materials and design, such as putting a permanently paved road where a gravel road used to be.

- Building new infrastructure or moving existing infrastructure to new locations except when required in exercise of perfected water rights. Examples of actions not covered include redrilling a well in a new location, building a new access road, or installation of new diversion works where none previously existed.

How long is this special rule in effect?

If extended, the special rule will remain in effect permanently. As with any special rule, if at any time the Service determines that it does not provide for the conservation of the species, it can be amended again or discontinued.

Can I graze cattle or cut hay in areas where Preble's might be found?

Yes, if you are continuing past practices and not expanding the current footprint of the cultivation or cutting. Under the special rule, any unintentional take associated with existing ongoing agricultural practices such as grazing and haying will not be a violation of the Endangered Species Act. However, this special rule does not exempt modifications to existing agricultural activities that increase impacts to Preble's or its habitat.

Do I need permission to try to get rid of mice in my house or barn?

No. Under provisions of this special rule, any incidental take of Preble's associated with rodent control within 10 feet of a structure would not be considered a violation of the Endangered Species Act.

How does this special rule affect new development?

New development activity is not covered under this special rule and is subject to the provisions of the Endangered Species Act. This has been the case since the Preble's was listed as a threatened species in 1998.

Will the final version of the special rule have the same provisions as the proposal?

The Service will review the comments received concerning the proposed extension of the amended special rule, and determine if the proposal balances the conservation needs of the Preble's with the needs of the regulated public.

How will these exemptions help conserve the Preble's?

The special rule provides for the conservation of the Preble's mouse by allowing certain activities to continue. Activities such as ditch maintenance and noxious weed control help to maintain habitat for this species; rodent control and ongoing agricultural practices allow for voluntary conservation efforts and advance our understanding of the species.

The U.S. Fish and Wildlife Service believes that bringing a wide spectrum of partners into the

collaborative planning process will increase overall conservation of the Preble's meadow jumping mouse. The exemptions in the special rule will allow many everyday activities to continue while the Service works with State and local governments to ensure that appropriate consideration is given to the needs of the mouse.

It is the U.S. Fish and Wildlife Service's intent that by reducing the regulatory burdens, where appropriate, local governments and private landowners will be more willing to participate in voluntary conservation planning. Organizations, agencies, and private individuals are often reluctant to enhance or promote a declining species because of the fear of government oversight and imposed regulations. In contrast, voluntary, cooperative efforts promote trust, education, and acceptance of the value of imperiled species.

Will section 7 consultations be required under this special rule?

Under section 7 of the Endangered Species Act, any Federal agency must consult with the U.S. Fish and Wildlife Service when any action the agency carries out, funds, or authorizes – by granting a permit, for example – *may affect* a listed endangered or threatened species.

This special rule does not change the obligations of Federal agencies to consult with the Service if their actions could affect Preble's or its habitat.

What conservation measures are currently being developed?

The State of Colorado, the U.S. Fish and Wildlife Service, and various local governmental entities in Colorado and Wyoming are working together to develop habitat conservation plans to conserve and protect the Preble's and its habitat. These habitat conservation plans (HCPs) will further the long-term conservation and recovery goals for the Preble's.

Will these exemptions be included in future Habitat Conservation Plans?

Not necessarily. They are independent of any HCP that may be developed. Whether similar activities are addressed in any individual HCP is up to the discretion of the entity developing the plan.

Who should I call if I have questions about the exemptions or if my activities are covered under this special rule?

If you have questions, please call the U. S. Fish and Wildlife Service's Colorado Field Office at (303) 275-2370 or the Wyoming Field Office at (307) 722-2374.

Where should I send my comments regarding this proposed extension of the special rule?

Comments on the proposed extension should be mailed to: U. S. Fish and Wildlife Service, Susan Linner, Field Supervisor, Ecological Services, 755 Parfet Street, Room 361, Lakewood, Colorado 80215. Comments should be received by March 25, 2004.

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